

EMPLOYER STATUS DETERMINATION
Three Rivers Railway Company

This is the determination of the Railroad Retirement Board concerning the status of Three Rivers Railway Company (TRRC) (BA No. 3291) as an employer under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

Information regarding TRRC was provided by various sources. In a letter dated October 13, 1993, from attorney Ronald M. Johnson to the National Mediation Board, Mr. Johnson explained that TRRC and CSX Transportation Company (CSXT) had entered into an agreement under which CSXT would operate the rail properties of TRRC. This agreement required, and received, the prior authorization of the Interstate Commerce Commission (ICC). See, Interstate Commerce Commission Finance Docket No. 32326, service date October 5, 1993. Under the ICC's notice of exemption procedures, the agreement was considered approved as of September 17, 1993. That is the time at which the operating agreement between CSXT and TRRC took effect. According to Mr. Johnson, effective September 17, 1993, when the operating agreement between CSXT and TRRC was put into effect, TRRC ceased to operate as a separate rail carrier. This was confirmed in a letter dated March 17, 1994, from Mr. Maurice J. Robinson, Senior Manager, Payroll Analysis for CSXT, to the Board. According to Mr. Robinson, the last TRRC payroll was paid September 10, 1993. Former TRRC employees were transferred to CSXT.

TRRC retains authority to operate as a railroad and accordingly would still nominally fall within the definition of employer in the RRA and RUIA. However, it does not now operate the line and has no intention of doing so.

In cases such as this where an entity has authority to operate a rail line, but does not actually operate the line in question, the Board looks to the identity of the entity operating the line and the nature of the relationship of that entity to the ICC certified carrier to determine the status of the certified carrier under the RRA and RUIA. If the operating entity is itself a carrier employer covered under the Acts administered by the Board, or if that entity has been recognized by the ICC as the operator of the line in question, which will result in that entity being found to be a covered employer with respect to the operation of the line it has undertaken, and if the certified entity has no involvement in the actual operation of the rail line, the Board will find the certified entity not to be a covered employer under the RRA and the RUIA. If, however, the operating entity is neither a covered employer nor an entity that has been recognized by the ICC as the operator of the line, the Board will find the certified entity to be a covered employer and persons operating that line to be employees of the covered employer.

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TRRC has no employees and operations are conducted by the employees of another railroad carrier, which is an employer under the Acts. That employer reports the employee service rendered to operate TRRC's rail line to the Board. Consistent with above-described analysis of cases such as this, a majority of the Board finds that Three Rivers Railway Company is, effective September 10, 1993, no longer an employer subject to the Railroad Retirement and Railroad Unemployment Insurance Acts.

Glen L. Bower

V. M. Speakman, Jr.
(Dissenting)

Jerome F. Kever

CCCook:RLSimmons:rls:ik
trrc.cov
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TO : The Board

FROM : Catherine C. Cook
General Counsel

SUBJECT: Coverage Determination
Three Rivers Railway Company

Pursuant to the request by memorandum from the Secretary of the Board dated October 30, 1995, attached please find a revised decision for a majority of the Board in the above referenced case.

Attachment